

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 15-0628 KG/LAM
CR 14-2487 KG

PEDRO GAMBOA-MACIAS,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

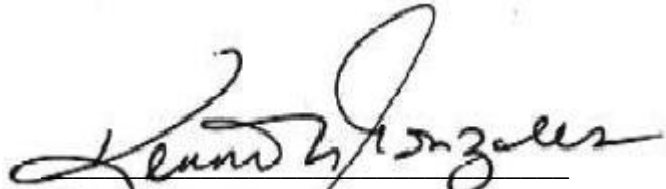
This matter is before the Court, *sua sponte* under rules 4(b) and 11(a) of the Rules Governing Section 2255 Proceedings, on Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (CV Doc. 1; CR Doc. 23) filed on July 20, 2015. Defendant alleges that his elderly mother is very depressed by family circumstances; he fears that she may not be alive when he is released and can return to his home country. He asks the Court to show leniency and compassion by reducing his sentence so that he can spend time with his parents. The Court will dismiss the § 2255 motion.

Defendant's allegations do not support claims for relief under § 2255. "A § 2255 motion is one "claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." *United States v. Nelson*, 465 F.3d 1145, 1148 (10th Cir. 2006)." As noted above, Defendant makes no claim that his sentence is illegal or otherwise subject to collateral attack. Because "it plainly appears from the motion . . . that [Defendant] is not entitled to relief," 28 U.S.C. § 2255 R. 4(b), the Court will dismiss his motion.

Furthermore, under rule 11(a) of the Rules Governing Section 2255 Cases, the Court

determines *sua sponte* that Defendant has failed to make a substantial showing that he has been denied a constitutional right. The Court will therefore deny a certificate of appealability.

IT IS THEREFORE ORDERED that Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (CV Doc. 1; CR Doc. 23) filed on July 20, 2015, is DISMISSED with prejudice; a certificate of appealability is DENIED; and judgment will be entered.



UNITED STATES DISTRICT JUDGE